

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRIAN SIMPSON.,

Plaintiff,

v.

TPR. JERAIL SMITH.,

Defendant.

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Civil Action No. 21-107
Senior Judge Nora Barry Fischer

MEMORANDUM ORDER

The above captioned case was initiated by pro se Plaintiff Brian Simpson on January 26, 2021, and was referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court. (Docket No. 1). Plaintiff's motion to proceed in forma pauperis was granted and his Complaint was filed on February 1, 2021. (Docket No. 4). Thereafter, on February 3, 2021, the Magistrate Judge issued a Report recommending that Plaintiff's Complaint be dismissed, with prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B) as frivolous and malicious and for failure to state a claim for relief upon which relief can be granted. (Docket No. 5). The Magistrate Judge further recommended that leave to amend be denied, as any amendment of the Complaint would be futile. (Docket No. 5). Plaintiff was served with the Report and Recommendation at his listed address of record and advised that written objections were due by February 22, 2021. To date, no objections have been filed nor has Plaintiff sought an extension in time in which to do so.

After *de novo* review of the pleadings and documents in this case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 26th day of February, 2021:

IT IS ORDERED that the Report and Recommendation [5] dated February 3, 2021 is ADOPTED as the Opinion of the Court;

IT IS FURTHER ORDERED that Plaintiff's Complaint [4] is dismissed, with prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B) as frivolous and malicious and for failure to state a claim upon which relief may be granted;

IT IS FURTHER ORDERED that leave to amend is denied, as any amendment to Plaintiff's Complaint would be futile. *See FletcherHarlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007);

IT IS FURTHER ORDERED that the Clerk of Court mark this case CLOSED; and,

FINALLY, IT IS ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

BY THE COURT:

s/Nora Barry Fischer
Nora Barry Fischer
Senior U.S. District Judge

cc: BRIAN SIMPSON
4189 Edinburg Road
New Castle, PA 16102
(via first class mail)